

Virginia Interagency Advisory Council on Administrative Dispute Resolution

Minutes

March 15, 2007 Meeting

Richmond, Virginia

Present: Viola Baskerville, Secretary of Administration and Chair; Claudia Farr, Lead Staff; Cindy Berndt; Al Bridger; Joice Conyers; Kathy Fischer; Charles Gray; Renita Henderson; Barbara Hulburt; Leslie Hutcheson-Prince; Larry Jones; Donita King; Fred Kozak; Seward McGhee; Carol Mitchell; Barbara Newlin; John Settle, Phil Smith (for Ray Davis); and Ernest Spratley

Secretary Baskerville called the meeting to order at approximately 10:00 a.m. She welcomed Cindy Berndt, a new Council member appointed by Secretary Bryant to fill the vacancy created due to Bill Price's resignation. Secretary Baskerville expressed her appreciation for Mr. Price's distinguished service on the Council over the past five years, and announced that Marty Parrish had accepted the role of Co-Chair of the Data Subcommittee.

Secretary Baskerville reported that she and Claudia Farr recently discussed with Jane Kusiak of the Council on Virginia's Future the benefits of ADR for state government, the need for metrics and cost/benefit analyses, and possible funding options for further research and developing a business plan.

Subcommittee and Related Reports: Subcommittees gave their reports, which the Council discussed as follows:

Implementation Subcommittee:

Carol Mitchell and Donita King reported the following:

ADR Contract Clause Language: Joe Damico of DGS provided the subcommittee with the generic ADR contract clause language that must be part of every procurement for goods and services, with the exception of information technology goods and services (for which VITA's ADR terms and conditions apply) and professional services for which an agency may either use the generic ADR contract language for goods and services, or come up with their own language as approved by their representative at the Office of the Attorney General. (See attachment A.)

Americans with Disabilities Act Accommodations Notice for Agency ADR Programs:

Carol Mitchell shared the language used by DPOR in its ADR communications to inform participants of the availability of reasonable accommodations to allow them to fully participate in the ADR service. (See attachment A.)

Website links: The subcommittee recommends putting links on the Council's website to resources in (i) drafting and using ADR contract clauses, and (ii) providing accessibility to ADR services for the disabled.

Shared neutrals: the subcommittee will contact the federal shared neutrals program lead for the Washington, D.C. area for an understanding of how that program works, and from there work on developing an approach that would succeed for Virginia. This aspect of the Council's work is challenging, and will require a carefully thought out plan. John Settle mentioned that the federal program has been very successful, but that quality control and training will be critical. Subject matter expertise will be needed in a number of areas apart from employment mediation -- for example, procurement, contracts, fair housing, etc.

Executive Order 33: Paula Gentius-Harris, Deputy Director of the Department of Minority Business Enterprise (DMBE) updated the Council on progress made on the contract mediation program for SWaM (small, women, and minority) related disputes pursuant to Executive Order 33. A meeting was held last November at DMBE with representatives of DMBE, DGS, and VITA, as well as Claudia Farr on behalf of the ADR Council. Ms. Gentius-Harris reports that the Council's help is needed for training sessions on ADR for SWaM vendors. The suggestion was made to work in conjunction with existing SWaM and procurement training programs, such as training events sponsored by the Department of Business Assistance and DGS (for example, make ADR a plenary topic at the DGS fall conference).

Ms. Gentius-Harris also reported that two ADR brochures for SWaM vendors are being developed, one more general discussing the use of ADR, and the second more specific, addressing common procurement scenarios. Other issues being addressed include the need for prime/sub ADR provisions, and the need to simplify language used by agencies to describe their procurement/contract dispute resolution processes.

The need to identify the appropriate point in the process for ADR was emphasized, in that small businesses often have cash flow concerns that make it difficult to wait out a long process. John Settle suggested the use of ombuds for SWaM procurement and contract disputes; often small vendors don't know the right questions to ask, and an ombuds can help with that. Claudia Farr mentioned the need for funding for the ADR practitioners for this program, for example, for the training and oversight of shared neutrals.

Data Subcommittee:

Larry Jones reported that the data subcommittee is continuing its efforts to quantify the impact of ADR, and that Marty Parrish received preliminary information from the Division of Risk Management (DRM) on the cost of litigation to the state. Fred Kozak reported that other big areas of litigation cost to the state could be that of constitutional officers, who use outside counsel instead of OAG representation; and the cost of discovery, which is paid directly by agencies. Electronic discovery in particular is very expensive.

Training Subcommittee:

Barbara Newlin and John Settle reported the following:

December 2006 training: an additional 25 state agency dispute resolution coordinators (DRCs) and related staff attended a three-hour interactive course led by John Settle covering the basics of ADR in Virginia government.

Lunchtime Series: the subcommittee is planning periodic lunchtime ADR training sessions for state DRCs and related staff, with a focus on the Richmond area given the concentration of agencies there. Possible topics could include ADR in contracts and grants, the use of ombuds, and conflict management with customers or co-workers.

Training Resource List for DRCs: a list of training providers could be developed and provided on the ADR Council's web site as a resource to agencies and their DRCs.

Online tutorial: the training subcommittee reviewed and provided suggestions to the online tutorial for workplace conflict management developed for the Managing Virginia Program by the Department of Employment Dispute Resolution and the Department of Human Resources Management.

Secretary Baskerville thanked those present for their participation, and adjourned the meeting at approximately 11:15 a.m., after which the subcommittees met separately until approximately 12:00 p.m.

The next meeting will be June 14, 2007, 10:00 – 12:00, Oliver Hill Building

DGS – BOILER-PLATE ADR CONTRACT CLAUSE

B. **APPLICABLE LAWS AND COURTS**: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

The above term and condition is required to be a part of every procurement for non-information technology goods and non-professional services. Agencies purchasing IT goods and services use VITA's terms and conditions for ADR. Agencies purchasing professional services (i.e. architects, engineers, doctors, pharmacy) may use the language in paragraph B above or come up with their own language as approved by their OAG representative.

Agencies may develop additional terms and conditions that address ADR, but they must get language approved by their OAG representative.

ADA CLAUSE FOR NOTICES

Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the Department at (804) 367-####. The Department fully complies with the American with Disabilities Act. Please notify the Department of your request for accommodation as soon as possible for consideration of your request.